

# Government of the District of Columbia

## ZONING COMMISSION



ZONING COMMISSION ORDER NO. 475  
CASE NO. 85-6  
(Parking Lots in SP Districts)  
November 4, 1985

Pursuant to notice, a public hearing was held by the District of Columbia Zoning Commission on July 22, 1985, At that hearing session, the Zoning Commission considered amendments to the parking lots in the SP District provisions of the District of Columbia Zoning Regulations, pursuant to Section 9101. The public hearing was conducted in accordance with the provisions of Chapter 5 of the Rules of Practice and Procedure before the Zoning Commission.

The Zoning Commission, by Z.C. Order No. 235, dated September 14, 1978, adopted amendments to the Zoning Regulations that included comprehensive revisions to the SP Districts. The amendments to the Regulations regarding parking were changed to sharply reduce surface parking lots, and also to severely curtail commuter parking. New surface parking lots are not permitted unless they are accessory to uses permitted in the SP District. Accessory parking garages continue to be permitted, Parking garages as principal uses can be provided if approved by the Board of Zoning Adjustment, only if they do not serve all-day commuter parking. All these changes were designed to respond to the City's Goals and Policies, particularly as to air quality, transportation and land use.

It was the anticipation of the Zoning Commission that existing parking lots in SP Districts would be phased-out over the four year period provided, and that new mixed-use or residential development would occur on those sites. Consequently, the Zoning Commission adopted the following amendments to the Zoning Regulations:

"4101.41 Parking lot, in existence on October 5, 1978 under approval by the Board of Zoning Adjustment may be permitted by the Board to continue in existence for a period not to exceed four years from the date that the present Certificate of Occupancy expires provided that:"

The Zoning Commission, by Z.C. Order No. 394 dated April 18, 1983, extended the effect of Paragraph 4101.41 by two additional years; to read "six years, in lieu of "four years". The Commission determined that significant new mixed-use or residential development had not occurred since the adoption of Z.C. Order No. 235. The state of the economy and the condition of the financial market had resulted in little new development activity in the SP areas. Further, delays had occurred in the construction scheduling of the Metrorail system, resulting in less effective transit service being in place than the Commission anticipated in 1978. The assumptions underlying the four-year phase-out period had thus changed.

The Executive Director of the Zoning Secretariat, by memorandum dated May 3, 1985 and on behalf of the Board of Zoning Adjustment (BZA), requested the Zoning Commission to consider amendments to the Zoning Regulations in regards to the treatment of parking lots in SP Districts. The memorandum indicated that the certificates of occupancy for many parking lots in SP Districts were expiring and many applications to continue the use of those parking lots were pending BZA review for use variances.

The memorandum further indicated that the BZA found another difficulty in assessing the use variance cases presented. Applicants have argued that there is no use that can be made of the property at the moment, and have related that argument to an inability to sell or finance development of the sites in the recent past. If the BZA were to subscribe to that argument, it would establish a different basis for the grant of a use variance than has traditionally been accepted. That basis would not primarily be rooted in any exceptional or extraordinary condition of the property, but rather would be founded upon larger economic or market conditions extraneous to the property. While such considerations can be and were legitimately considered by the Zoning Commission in amending the Regulations, the BZA is concerned that such a basis for a use variance could be extremely damaging to the consideration of use variances in other situations.

On May 13, 1985, at its regular monthly meeting and upon consideration of the request of the BZA, the Zoning Commission authorized the scheduling of a public hearing and initiated action to consider amendments to the Zoning Regulations to allow the continuation of existing parking lots in SP Districts as special exceptions rather than use variances.

At that same meeting the Zoning Commission directed the Zoning Secretariat to prepare alternative proposed language for Commission review that would achieve the aforementioned

results, The Zoning Commission subsequently advertised the following alternatives for public hearing:

Alternative 1: Revise existing Paragraph 4101.41 to allow for a longer phase-out period than six years by deleting the number "six (6)" and replacing it with the number "ten (10)."

Ten years effectively allows a four year time frame from the present, and may be a long enough period to see a change in development conditions that would allow the parking lots to terminate and other development to occur.

Alternative 2: Revise existing Paragraph 4101.41 to delete the words "in existence for a period not to exceed six (6) years from the date that the present Certificate of Occupancy expires."

This would eliminate the phase-out period in its entirety, and would remove any need to guess at what development conditions might be in the future. The remaining conditions of Paragraph 4101.41 would not be changed. In particular, no new parking lots would be permitted and no all-day commuter parking lots would be permitted.

Alternative 3: Revise existing Paragraph 4101.41 to delete the words "in existence for a period not to exceed six (6) years from the date that the present Certificate of Occupancy expires." Add a new Sub-paragraph 4101.414 to read as follows:

4101.414 If the parking lot is within 1,000 feet of the entrance to a Metrorail station, the parking lot shall not be permitted to continue for more than twelve years after the station begins operations.

This would eliminate the phase-out for lots that are not near mass transit, but would establish a time limit for areas that do have alternative transit service. The twelve year period, calculated from the date operations started at a particular station, would allow many of the parking lots in the judiciary Square area to be continued for twelve years from March, 1976.

Alternative 4: Revise existing Paragraph 4101.41 to delete the words "in existence for a period not to exceed six (6) years from the date that the present Certificate of Occupancy expires." Add a new Sub-paragraph 4101.414 to read as follows:

4101.414 The parking lot meets a demand for parking spaces that is not being met by other parking lots or by public transit services in that neighborhood.

This eliminates a specific phase-out period, but ties the continuation of parking lots to a more general determination by the BZA that there is a legitimate need for parking not being met by other sources.

The District of Columbia Office of Planning (OP), by memorandum dated July 12 and August 29, 1985, recommended Alternative #1, as amended, to read "twelve years," in lieu of "ten years." The OP stated that the rezoning of Downtown, mandated by the Comprehensive Plan, is likely to eliminate much of the SP zoning which conflicts with many Downtown objectives in the Judiciary Square/North and other areas. Rezoning Downtown will be a time consuming and difficult case. Therefore, six years is not excessive. In general, OP believed that continuing the present policy will continue to place some pressure for redevelopment on some of the parking lots. At the end of the six years, rezoning and redevelopment should have resolved most of the issues.

The District of Columbia Department of Public Works (DPW), by memorandum dated August 12, 1985, supported Alternative #1, as amended to read "twelve years." The DPW reported:

"..... that much of the demand for parking lot uses will have diminished due to increased Metrorail transit availability and the replacement of many of the surface parking spaces by underground parking. In light of the pace at which development is now taking place in the downtown, it appears that this extension of the expiration date of the SP parking lots is needed in order to assure a more balanced transition period between the existing supply of surface parking in the downtown and the future availability of garage parking as development occurs."

There were no Advisory Neighborhood Commissions that expressed their concerns relative to this case.

The Washington Parking Association (WPA), by testimony presented at the public hearing, supported Alternative #2. The WPA believed that the elimination of the prohibition on all-day commuter parking and the prohibition of new parking lots in SP Districts were in-order.

The Residential Action Coalition (RAC), by testimony presented at the public hearing, opposed any extension to permit parking lots in SP Districts to continue. If an extension were granted, RAC recommended a one-year extension,

The Commission concurs with the intent of the recommendations of the OP and DPW. The Commission, however, notes that the consideration of an extension of time beyond the numbers of years included in the notice of public hearing

may go beyond the scope of the authority of the Commission in this proceeding.

The Commission further notes its commitment for the eventual reduction and elimination of the majority of surface parking lots in SP Districts. Because of that commitment, the Commission believes that the position of the WPA is contrary to that commitment and is inappropriate.

The Commission believes that it is appropriate to allow parking lots that were already in existence in 1978 to remain in operation for a definite period into the future. To leave the regulations as they are, would force property to remain vacant or would require applicants to seek use variances. While the BZA is capable of processing and deciding use variance applications, the standards against which such applications must be measured are very rigorous.

The Commission believes that BZA applicants should not have to meet that test, when the development assumptions that were the basis of the extension period are no longer valid.

The Commission further believes that to preclude interim parking use of these existing unimproved properties, may well result in the properties being left vacant. and unattended, and potentially adversely affect the areas in which they are located by creating eye-sores and crime havens.

The Commission believes that the position of the RAC is unreasonable and fails to strike a balance of concern by not effectively addressing the potential of adverse affects of unattended parking lots on the area.

A notice of proposed rulemaking was published in the D.C. Register on October 4, 1985. No comments or responses were received as a result of that publication.

The proposed amendments to the Zoning Regulations were referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self Government and Governmental Reorganization Act. The NCPC, by report dated October 3, 1985, indicated that the proposed amendments would not adversely affect the Federal Establishment and other Federal interests in the National Capital nor be inconsistent with the Comprehensive Plan for the National Capital. The NCPC notes that the time extension for some of the existing parking lots may be adverse to Federal interests, When time extension applications are filed, the NCPC intends to review those locations and advise the BZA as to any adverse impacts on Federal interests.

The Zoning Commission believes that the proposed amendment to the Zoning Regulations is in the best interests of the District of Columbia, is consistent with the intent and

purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan of the District of Columbia.

In consideration of the reasons set forth herein, the Zoning Commission hereby orders APPROVAL to amend the Zoning Regulations.


The specific proposed amendment is to delete the word "six" in Paragraph 4101.41 and replace it with the word "ten", so that Paragraph 4101.41 would read as follows:

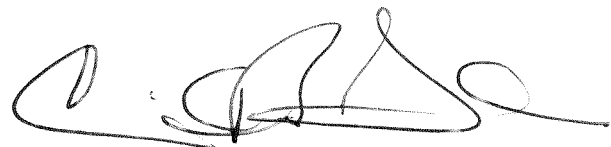
4101.41 Parking lot, in existence on October 5, 1978 under approval by the Board of Zoning Adjustment may be permitted by the Board to continue in existence for a period not to exceed ten years from the date that the present Certificate of Occupancy expires provided that:

Vote of the Commission taken at the public meeting on September 9, 1985: 5-0 (Lindsley Williams, Patricia N. Mathews, Maybelle T. Bennett, George M. White and John G. Parsons, to approve) ,

This order was adopted at the public meeting of the Zoning Commission on November 4, 1985 by a vote of 4-0 (Lindsley Williams, Patricia N. Mathews, Maybelle T. Bennett, and John G. Parsons, to adopt - George M. White, not present not voting).

In accordance with Section 4.5 of the Rules of Practice and Procedure before the Zoning Commission of the District of Columbia, this order is final and effective upon publication in the D.C. Register, specifically on 29 NOV 1985.

  
MAYBELLE T. BENNETT  
Chairperson  
Zoning Commission

  
CECIL B. TUCKER  
Acting Executive Director  
Zoning Secretariat